THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION No.23249 of 2000

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Dated 27-02-2006

Between:

Mrs.Naseem Akthar.

..... PETITIONER

AND

Citizen High School, rep. by its Correspodnent, at 21-3-229/232,Devdi Shahmath Jung, Pandhi Burakh, Husaini Ala,, Hyderabad-500 002 & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.23249 of 2000

O R D E R:

The relief sought for in this writ petition is for a direction to the first respondent-school to fix the salary of the petitioner as per the Government Scales and to pay difference of wages.

Sri V.Jogaiah Sharma, learned counsel for the petitioner, would submit that while the relief sought for in the writ petition was against the first respondent-school, the petitioner would be satisfied if a direction is issued to the third respondent to enquire into and take an appropriate decision in this regard.

Facts, in brief, are that the petitioner was appointed as a temporary School Assistant in the first respondent-school. On termination of her services, the petitioner submitted representation on 29-10-1990 to the third respondent, who inturn instructed the Deputy Educational Officer to enquire into the matter and submit a report. The third respondent, vide proceedings dated 03-04-1991, directed the first respondent to permit the petitioner to join duty and report compliance by 10-04-1991. Despite the petitioner submitting her joining repot on 06-04-1991, the first respondent instead of permitting the petitioner to join, preferred W.P.No.5201 of 1991, which came to be dismissed by this Court on 10-04-1991 holding that there is an alternative remedy of appeal. The petitioner filed W.P.11627 of 1991, and this Court, by order dated 16-02-2000, disposed of the writ petition directing the first respondent-school to pay half of the salary and allowances for the period prior to the termination and pay future salary and allowances in full duly giving benefit of increment for the entire period of service with effect from 13-11-1981. Though the petitioner was taken back on duty by the first respondent, alleging that the first respondent had failed to pay 50% of the back wages as ordered by this Court and had failed to fix the scale on par with Government Scales, petitioner filed C.C.No.1132 of 2000 claiming a sum of Rs.3,91,164.95 ps. towards arrears of salary. This Court, closed the contempt case, by order dated 13-11-2000, giving liberty to the petitioner to pursue her claim by filing appropriate proceedings before the appropriate forum as such a relief could not be sought for in the contempt case. Pursuant thereto, the present writ petition is filed claiming arrears of salary on par with Government Scales and to fix the salary in accordance with Government Scales of pay.

A counter affidavit is filed by the first respondent, wherein it is stated that the petitioner was initially paid a sum of Rs.500/-, that she was continued on *adhoc* basis till February, 1988, that she was relieved on her request to pursue B.Ed course, and when she again approached the first respondent-school her services were engaged as a temporary School Assistant and she was paid a consolidated remuneration of Rs.600/- per month. It is stated that due to fall in students strength, resulting in reduction of fee income, the management reviewed the situation and decided to do away with the *adhoc* teaching staff and accordingly, three *adhoc* teaching staff were retrenched and the petitioner's services were discharged from 01-11-1990. Aggrieved thereby, she represented to the District Educational Officer.

Reference is made to the fact that District Educational Officer directed the first respondent-school to take the petitioner back into service by 10-04-1991, and to the order of this Court in W.P.No.11627 of 1991, dated 16-02-2000, wherein a direction was issued to the first respondent to prefer an appeal, and in the appeal preferred by the first respondent, the authorities had directed that the petitioner be reinstated into service without giving cognizance to the report of the Deputy Educational Officer. It is stated that the Government reviewed the scales of pay of Teachers in G.O.Ms.No.100, dated 17-12-1982 and that the said G.O. has no application to teaching staff working in unaided schools. It is stated that the Government issued detailed instructions in G.O.Ms.No.524 and that Rule 18(4) thereof provides that the management of unaided institutions should set apart 45 to 50% of its fee income for payment of salaries to teachers and that the very same provision has been included in Rule 18 of G.O.Ms.No.1, dated 01-01-1994. It is stated that the first respondent had applied these provisions and determined the pay structure of the institution and as such, the petitioner's contention that she is entitled to the salary at Government scales of pay was contrary to G.O.Ms.No.524 and G.O.Ms.No.1. It is stated that the first respondent is funding more than 50% of its fee income towards payment of salaries to teachers, that the first respondent is not having any other source of income either in the shape of endowment or Trust or properties except the fee income. It is stated that the first respondent is not in a position to pay the salary to the petitioner on par with Government Scales of pay. It is stated that the petitioner is being paid Rs.700/- plus allowances, that when she rejoined duty on 02-11-1988, she was given the basic scale of Rs.530/- and allowances admissible as per the management rules, and as per the orders of this Court, when she joined duty on 06-03-2000, she was allowed a higher scale of pay of Rs.700/- and that she was paid all arrears as directed by this Court. It is stated that the petitioner is not entitled for Government scales of pay, that all teachers working as school assistants are being paid the very same scale of pay and there was no discrimination against the petitioner. It is stated that even in the ETR proposals, relating to teaching and non-teaching staff, petitioner was given equal scale of pay as prescribed in G.O.Ms.No.1, dated 01-01-1994.

Sri Jogaiah Sarma, learned counsel for the petitioner, would refer to the proceedings of the first respondent, dated 22-10-1990, wherein reference is made to her appointment made on 02-11-1988 as a Temporary School Assistant for a period of two years in the pay scale of Rs.700-1200. Learned counsel would refer to the

details of payment of back wages paid to the petitioner from the date of removal till the date of reinstatement, wherein the petitioner was paid arrears of salary in the pay scale of Rs.530-850/-. Learned counsel would also refer to the letter addressed by the District Educational Officer to the learned Government Pleader for School Education, in proceedings dated 16-09-2001, a copy of which was marked to the counsel on record, in support of his submission that the ETR proposals be produced in Court. Learned counsel would contend that this statement, regarding the payment of arrears of back wages, when compared to the proceedings dated 22-10-1990, would clearly show that the pay scale of the petitioner had been reduced which is contended as not in accordance with law. Learned counsel would refer to the statutory rules i.e. The A.P. Educational Institutions "Establishment, Recognition, Administration and Control of Schools under Private Managements" Rules, 1993, notified in G.O.Ms.No.1, dated 01-01-1994, and contend that under Rule 9(1), the first respondent was required to submit an application for recognition in Form-III. Learned counsel would refer to Form-III, which gives various particulars to be mentioned in the application for grant of recognition and clause 12 thereof, relates to the proposed fee structure. Learned counsel would submit that since the proposed fee structure mentioned in Form III proposal is the basis for grant of recognition, and since the first respondent despite informing the authorities in the application seeking recognition that the petitioner was paid the higher scale of Rs.700-1,200/-, had, in fact, paid her the lesser scale of Rs.530-800/-. Learned counsel would submit that any such false declaration in the proposal would necessitate recognition being withdrawn to the first respondent-school.

Reference in this context may also be made to Rule 18, which prescribes the criteria for fixing fee structure and allocation of revenue earned as fee. Rule 18 reads thus:

Criteria for fixing fee structure and allocation of revenue earned as fee:

1. Every un-aided school or upgraded aided school (without aid for higher classes) shall have its own fee structure to determine the fee to be collected from the students of various courses/classes.

2. The Governing Body attached to the institution is empowered to prescribed the fee structure. While fixing the fee structure, the Governing Body shall take into account the following:

    a. Expenditure involving payment of salaries and other benefits to the staff;

    b. Expenditure involving payment of rent for the building

occupied by institution and the upkeep of the building;

c. Expenditure involving electricity and water charges;

d. Expenditure involving office requirements like stationery, stamps etc;

e. Expenditure involving class room needs like chalk, dusters etc.;

f. Expenditure involving purchase of books for the library and chemicals and specimens for the laboratory;

g. Expenditure involving payments to the Auditors engaged for auditing the accounts;

h. Expenditure on contribution towards Education Cess;

i. Any other miscellaneous expenditure.

3. It is open for the governing body to take a decision to collect fees from students either monthly or quarterly or half yearly. However, the special fees shall be collected only once at the beginning of the academic year.

4. The fees collected from the students shall be allocated as to meet the following requirements:

j. 5% of the fees collected shall be earmarked as personal income to the management;

k. 15% of the fees collected shall be utilized for the maintenance of the institutions towards expenditure involving the building rent, electricity and water charges, stationery etc., required for the office payments to be made to menials and auditors, purchase of library books, chemicals, specimens and other material required for the laboratory and expenditure involving the upkeep of the institution etc.;

l. 15% of the fees collected shall be earmarked for the developmental activities of the institution i.e., expenditure involving opening of additional courses, classes, sections and upgradation of the institutions, construction of additional accommodation, acquiring costly equipment and furniture, purchase of land for the use of the institution and the like;

m. 50% of the fees collected shall be earmarked towards payment of salaries to the staff;

n. 15% of the fees collected shall be earmarked as

management's contribution towards staff benefits like gratuity, teachers' provident fund, Group Insurance Scheme etc.

5. The education agency shall maintain separate accounts in one or more banks for the amounts allocated for various purposes mentioned above so that the amount allocated for a specific purpose shall not be diverted for another purpose. These accounts opened as specified above shall be operated through joint accounts in the name of the Secretary/Correspondent, Manager of the Institution and the Head Master/Principal of the Institution.

6. The amounts falling under items (a) to (e) sub-rule (4) are subject to inspection and auditing by the Auditors appointed for the purpose by the governing body.

While Sri Nuty Ram Mohan Rao, learned counsel for the first respondent-school, would submit that the pay scales paid to the petitioner is in accordance with Rule 18, Sri Jogaiah Sarma, learned counsel for the petitioner, on the other hand, submits that the first respondent-school had acted contrary to Rule 9(1) of Form-III of the said rules.

These are all matters, which, normally, are not for this Court to examine in proceedings under Article 226 of the Constitution of India. Whether the pay scales given to the petitioner is in accordance with Rule 18, whether the first respondent-school in its application had stated that the scales being paid to the petitioner was higher than what was actually paid and whether such a proposal would necessitate recognition granted to the petitioner being withdrawn are all matters for the authorities under the Education Act to determine.

There shall, therefore, be a direction to the third respondent to examine the rival contentions of the petitioner and the first respondent-school, put them on notice, give them an opportunity of being heard, and pass appropriate orders thereafter, in accordance with law. The entire exercise in this regard shall be completed within a period of four months from the date of receipt of a copy of this order.

Accordingly, the writ petition is disposed of. However, there shall be no order as to costs.

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27-02-2006

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